the undesirable result of allowing murderers to share in the distribution of the estates of their victims, is to cause the legislatures of our several States to enact carefully worded statutes, establishing exceptions to our present laws of descent and distribution in this class of cases.[19]

PROHIBITION OF EMPLOYMENT OF ALIENS IN CONSTRUCTION OF PUBLIC WORKS.—The power of the legislature to protect the health, morals, and safety of the public, has been extended by a liberal interpretation of these terms to cover any provision, by reasonable means, for the general welfare.[1] As the exercise of the police power is subject to the Fourteenth Amendment,[2] however, no statute may be justified under the police power which arbitrarily infringes property rights or personal liberty, or which makes any unreasonable discrimination.[3] The question has been raised in the recent case of *People* v. *Crane* (App. Div., 1st Dept., 1914) 150 N. Y. Supp. 933,[4] whether a statute prohibiting the employment of aliens in the construction of public works is a reasonable exercise of the police power. Statutes have been upheld prohibiting aliens from killing wild birds or animals, or carrying shotguns,[5] or from obtaining licenses for selling liquor,[6] or peddling.[7] In all these cases, however, there is a clear connection between the discrimination and the public welfare; but in the present statute, the connection is not so apparent. The public works would not be any better built, since aliens are as well fitted as citizens of the United

[19]For examples of statutes applicable to this class of cases, see Kuhn *v.* Kuhn, *supra*; *In re* Kirby's Estate (1912) 162 Cal. 91; *In re* Mertes' Estate (Ind. 1914) 104 N. E. 753; Bruns *v.* Cope (Ind. 1914) 105 N. E. 471.

[1]People *v.* King (1888) 110 N. Y. 418; People *v.* Warden (1905) 183 N. Y. 223; Lawton *v.* Steele (1894) 152 U. S. 133, 137.

[2]The police power does not come into conflict with the Fourteenth Amendment so long as the discrimination is reasonable. Barbier *v.* Connolly (1884) 113 U. S. 27.

[3]People *v.* Williams (1907) 189 N. Y. 131; People *v.* Wilber (1910) 198 N. Y. 1. The discrimination must be clearly arbitrary and unreasonable, not merely possibly so. See Bachtel *v.* Wilson (1906) 204 U. S. 36, 41.

[4]The Appellate Division refused to enjoin the employment of aliens in the construction of the subway, first, because the statute was contrary to the Fourteenth Amendment, and, secondly, because the subway was not a public work. The court did not think it necessary to decide whether the statute violates our treaty with Italy. There have been two decisions on this point in New York; one holding the statute constitutional, People *v.* Ludington's Sons (N. Y. 1911) 74 Misc. 363, the other holding it unconstitutional. People *v.* Warren (N. Y. 1895) 13 Misc. 615. See also 14 Columbia Law Rev., 667.

[5]Patsone *v.* Pennsylvania (1913) 232 U. S. 138. The discrimination here was declared reasonable on the ground that it defined those from whom the evil could be said to be feared.

[6]Trageser *v.* Gray (1890) 73 Md. 250; see 12 Columbia Law Rev., 737.

[7]Commonwealth *v.* Hana (1907) 195 Mass. 262. As peddling affords a great opportunity for fraud, it is desirable for purposes of suit, that peddlers should be citizens with a fixed domicile. The Supreme Court of Maine, however, came to a different conclusion, because it did not consider peddling so open to fraud. State *v.* Montgomery (1900) 94 Me. 192.

States to perform this type of labor, and at less expense to the taxpayers, nor would the public generally be benefited by a reversal of the established and successful policy of the State to extend to aliens as many of the privileges accorded to citizens as possible.[8] As pointed out by the Appellate Division, the discrimination appears to be purely arbitrary, and in no way connected with the public welfare.

The legislature has recently been attempting to increase its control and regulation of work done for the State by a series of labor laws of which the statute under consideration is the latest and most exacting. The power of the legislature to fix wages and hours, which was at first repudiated in New York as a denial to the city and to the independent contractors of the right of freedom in contracting,[9] was recognized by the Supreme Court,[10] and is now generally admitted.[11] Such statutes, however, afford no support for the alien clause, for they are clearly not discriminatory. They merely prescribe the conditions under which the work shall be done, and they apply alike to all who contract with the State, and with those whom they employ.[12] On the other hand, this statute cannot be grouped with such statutes as the Arizona law, prohibiting the employment of more than 20 per cent. of aliens by any corporations within the State.[13] These statutes are void because they deny or infringe the right to labor and engage in any lawful calling, a right protected by the Constitution.[14] The theory on which these laws are based, if carried to its logical conclusion, would allow the State to prevent aliens from working at all,[15] which is not the case in the New York statute, for it does not necessarily follow that because the State as an employer refuses to employ aliens, it may prevent anyone else from doing so. Though not open to the above objection, the New York law does appear to be unconstitutional

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[8]See People *v.* Coler (1901) 166 N. Y. 1, 17.

[9]People *v.* Coler, *supra.* A distinction was suggested where the State employed laborers directly. People *v.* Orange etc. Co. (1903) 175 N. Y. 84. To overcome the effect of these decisions, the constitution of New York was amended in 1905 to permit the legislature to regulate wages and hours in the construction of public works, whereupon the statute was reenacted and, as to these provisions, declared constitutional. People *v.* Metz (1908) 193 N. Y. 148.

[10]Atkin *v.* Kansas (1903) 191 U. S. 207.

[11]Byars *v.* State (1909) 2 Okla. Cr. 481; *In re* Broad (1904) 36 Wash. 449; State *v.* Livingstone etc. Co. (1906) 34 Mont. 570; People *v.* Metz, *supra*; *contra,* Cleveland *v.* Construction Co. (1902) 67 Ohio St. 197, based on People *v.* Coler, *supra,* which is no longer law.

[12]Atkin *v.* Kansas, *supra,* 224.

[13]The decision of a special court of three federal judges, handed down January 7th, declaring unconstitutional the Arizona Anti-Alien Employment Act, has not yet been officially reported, but appears in short form in the New York *Times* of January 8th.

[14]Yick Wo *v.* Hopkins (1885) 118 U. S. 356; People *v.* Marx (1885) 99 N. Y. 377; People *v.* Williams, *supra.*

[15]From the court's opinion in the Arizona Alien Labor Case, as reported in the New York *Times*: "If under guise of police regulation a State can prohibit an employer from employing more than 20 per cent. of alien labor it can prohibit him from employing more than 5 per cent., and if 5 per cent. any at all."

as a denial of the equal protection of the laws.[16] The alien is being arbitrarily deprived of an opportunity of employment which the citizen of the United States enjoys. While it is true that no one is entitled, as of absolute right, to employment by the State,[17] nevertheless, the alien should not be put at a disadvantage by the denial of the opportunity to ask for such employment, nor should the State be allowed, under the guise of prescribing conditions,[18] to deprive him of the equal protection of the laws.[19]

SOME ATTRIBUTES OF LEASEHOLDS UNDER MODERN STATUTES.—In the recent case of *Spiro* v. *Robinson* (Ind. App. 1914) 106 N. E. 726, a wife made a lease of her separate real estate in her own name. The court upheld the transaction, deciding that the statute forbidding a conveyance or incumbrance by the wife of her property without joining her husband, did not apply to a lease. Since the word conveyance is limited, in the usual sense of the word, to transactions in real property,[1] the court logically held that the term is not properly applicable to a leasehold interest, and in so deciding is in accord with the great weight of modern authority construing similar provisions in the Married Women's Acts.[2] This construction is justified on the ground that the right to lease her property is a necessary incident to the wife's complete enjoyment thereof,[3] and clear expression should be required of the legislative intent to deny such right. Under the homestead statutes, which forbid a conveyance by the husband without his wife's consent, the courts have maintained the logical view as well, as long as the lease by the husband does not disturb his wife's possession in the premises.[4] Where, however, the lease would have the effect of unsuiting the homestead for the purposes of a residence, the courts have departed from the strict construction, in order to render substantial justice, and have denied the husband's sole right.[5] The tendency is to construe these statutes so as to protect the wife whenever possible.

It may be stated as a general proposition that the word conveyance has been construed as not to embrace in its meaning a term for years.[6] Where, however, the result will be to cause actual injustice,

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[16]See Gulf etc. Ry. *v.* Ellis (1897) 165 U. S. 150; Yick Wo *v.* Hopkins, *supra.*

[17]Atkin *v.* Kansas, *supra,* 223: "No employee is entitled, of absolute right, and as a part of his liberty, to perform labor for the state."

[18]The State is not prescribing conditions when it makes arbitrary discrimination. Atkin *v.* Kansas, *supra,* 224.

[19]People *v.* Warren, *supra*; but see People *v.* Ludington's Sons, *supra.*

[1]See Perkins *v.* Morse (1885) 78 Me. 17; Abbott's Law Dictionary, 285; see Bouvier's Law Dictionary, Rawle's Third Revision, 671.

[2]Sullivan *v.* Barry (1884) 46 N. J. L. 1; Perkins *v.* Morse, *supra*; see Vandevoort *v.* Gould (1867) 36 N. Y. 639; but see Buchanan *v.* Hazzard (1880) 95 Pa. 240; Dority *v.* Dority (1903) 96 Tex. 215.

[3]See Sullivan *v.* Barry, *supra.*

[4]See Engelhardt *v.* Batla (Tex. Civ. App. 1895) 31 S. W. 324.

[5]Mailhot *v.* Turner (1909) 157 Mich. 67.

[6]Under the usual recording acts, providing simply for the recordation of conveyances, a lease need not be recorded. Tuohy's Estate (1899) 23 Mont. 305. In many States, however, of which New York is a prominent